

NTSB Order No. EA-4287

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 12th day of November, 1994

DAVID R. HINSON,  
Administrator,  
Federal Aviation Administration,

Complainant,

V.

STEPHEN J. GRANTHAM,

Respondent .

Docket SE-13222

## OPINION AND ORDER

Respondent, acting pro se, has appealed from the oral initial decision issued by Administrative Law Judge Patrick G. Geraghty at the conclusion of an evidentiary hearing held on January 21, 1994. <sup>1</sup> In that decision, the law judge affirmed an order of the Administrator suspending respondent's airman certificate for 240 days based on four separate incidents

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

representing violations of sections 43.3(a), 91.7(a), 91.9(a), 91.13(a), 91.111(b), 91.119(c), and 91.307(c)(2) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 43 and 91).<sup>2</sup> As discussed below, we deny the appeal and affirm the initial decision.

Only a brief exposition of the facts is necessary here, given the detail of the initial decision. According to the suspension order, which served as the complaint, respondent allegedly violated the FARs on four separate occasions, each time while acting as pilot-in-command of a Cessna 150-L, and each time while instructing a student pilot. The Administrator asserted the following: 1) On April 12, 1992, respondent performed an acrobatic maneuver where the aircraft was inverted for part of the time, thereby exceeding the operating limits of the aircraft, and while his passenger did not have a parachute; 2) On April 25, 1992, respondent flew in formation flight with another aircraft without first obtaining the permission of that aircraft's pilot; 3) On May 17, 1992, respondent removed the passenger-side door of the aircraft he was operating prior to flight, thus performing an unauthorized material alteration to the aircraft and then operating an unairworthy aircraft; and 4) On October 1, 1992, respondent took off from a runway where a workcrew was present, passed by the crew at an altitude of 100 feet, turned around and passed within 500 feet of the crew again.

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<sup>2</sup>See Appendix for text of these regulations.

Since respondent admitted to the factual allegations charged in the May 17 incident, the law judge determined that the admission established the charges under sections 43.3(a) and 91.13(a) as a matter of law. Then, after hearing all the testimony and assessing the evidence, the law judge found that the Administrator proved all the other charges by a preponderance. Consequently, he affirmed the order of suspension in its entirety.

On appeal, respondent argues that his case was prejudiced by the failure of counsel for the Administrator to call Lloyd Switzer as a witness, despite the inclusion of Mr. Switzer on the Administrator's witness list before the hearing.<sup>3</sup> In reply, the Administrator asserts that he was under no obligation to call each and every witness named on the list. Although he had sent a subpoena to Mr. Switzer, counsel later decided that his testimony would not be necessary, and advised Mr. Switzer that he was released from the subpoena. Respondent was surprised at the hearing that the witness was not present and now claims that he was placed at a serious disadvantage. Yet, respondent had been made aware of his responsibility to secure the appearance of his own witnesses. By letter dated January 3, 1994, to counsel for the Administrator (with a copy to Judge Geraghty), respondent requested that the FAA issue subpoenas for the witnesses he

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<sup>3</sup>Mr. Switzer was the student-pilot on board the aircraft with respondent on October 1, 1992.

intended to call.<sup>4</sup> Administrator's counsel replied on January 6th, advising respondent that

it is not the function of the FAA or this office to serve subpoenas on behalf of Respondents in NTSB cases. You are further advised, however, that you may make application to Judge Geraghty to provide subpoenas to you for those witnesses you want to call on your behalf. **It will be your responsibility to serve the subpoenas on those witnesses.**

(Emphasis added.) Respondent also requested, and received by letter dated January 14, 1994, a witness list from Administrator's counsel, with an explanation that it was a "listing of the witnesses I may call in this case."

Respondent does not dispute that the law judge provided him with all the requested subpoenas, and admits that he decided not to serve the subpoenas, choosing instead to rely on the Administrator's statement that he "may" call those witnesses at the hearing. That respondent was surprised when the witness failed to appear does not indicate that he received an unfair hearing.<sup>5</sup> If he wanted to ensure Mr. Switzer's presence, it was respondent's obligation to serve him with the subpoena supplied, as requested, by the law judge.

Respondent also claims that the law judge impermissibly limited his final argument. Again, we are unconvinced. The law judge gave respondent considerable leeway, not only at closing,

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<sup>4</sup>Mr. Switzer was listed among these witnesses.

<sup>5</sup>Upon respondent's request, the law judge admitted into evidence Mr. Switzer's statement about the incident, dated October 8, 1992. (Exhibit R-6.)

but throughout the hearing. Respondent heard the final argument made by counsel for the Administrator, then was invited to make his argument, which he did. In response to the law judge's question, "Is that it?," respondent answered, "Yes, sir. It is."

(Transcript at 170.) After the Administrator's counsel indicated that he had no rebuttal, the law judge went off the record for a "few minutes," and then rendered his oral initial decision. Id. If, indeed, respondent had not finished his closing argument, he had ample opportunity to alert the law judge.<sup>6</sup>

Based on the foregoing, we find that respondent has presented to the Board no valid reason for overturning the law judge's decision.

**ACCORDINGLY, IT IS ORDERED THAT :**

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 240-day suspension of respondent's airman certificate shall begin 30 days after service of this order.<sup>7</sup>

HALL, Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup>The law judge's role is not to act as counsel for a pro se respondent. See Administrator v. Thomason, NTSB Order No. EA-4031 at 3 (1993).

<sup>7</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).

**§ 43.3 Persons authorized to perform maintenance preventive maintenance, rebuilding, and alterations.**

(a) Except as provided in this section and § 43.17, no person may maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which this part applies. Those items, the performance of which is a major alteration, a major repair, or preventive maintenance, are listed in Appendix A.

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

**§ 91.9 Civil aircraft flight manual, marking, and placard requirements.**

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certifying authority of the country of registry.

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.119 Minimum safe altitudes: General.**

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

**§ 91.307 Parachutes and parachuting.**

(c) Unless each occupant of the aircraft is wearing an approved parachute, no pilot of a civil aircraft carrying any person (other than a crewmember) may execute any intentional maneuver that exceeds -

(1) A bank of 60 degrees relative to the horizon; or

(2) A nose-up or nose-down attitude of 30 degrees relative to the horizon.

**591.111 Operating near other aircraft.**

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.